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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

RAYMOND J. AZAR,

Petitioner,

v.

THE RETIREMENT BOARD OF
THE EMPLOYEES' RETIREMENT SYSTEM OF
THE STATE OF RHODE ISLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

PETITION FOR WRIT OF CERTIORARI.

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QUESTIONS PRESENTED FOR REVIEW

The questions presented are whether, under the circumstances presented in this case including the imposition of criminal fines, restitution and a sentence of incarceration on account of a felony related to public employment, any subsequent revocation and/or reduction of a public pension in accordance with the Rhode Island Public Employee Pension Revocation and Reduction Act ("PEPRRA"), 1992 R.I. Pub. Laws ch. 306, art. 1, § 8, which provides a mechanism for the revocation or reduction of the public pension of a public employee who has been convicted or pleaded guilty or nolo contendere to a felony related to public employment, offends the United States Constitution by violating: 1) the Fifth Amendment prohibition against double jeopardy; and/or, 2) the Eighth Amendment prohibition against excessive fines and/or punishment.

PARTIES TO THE PROCEEDINGS.

The parties to the proceedings in the state courts for the State of Rhode Island are the following:

1) The Retirement Board of the Retirement System of the State of Rhode Island, who was the Plaintiff in the state trial court and the Appellee in the state appellate court;

2) Raymond J. Azar, Defendant in the state trial court and the Appellant in the state appellate court;

3) The City of Cranston, Rhode Island, an intervenor in the state courts[1]; and,

4) Dennis Azar, an intervenor in the state courts and the dependent brother of Raymond J. Azar.[2]

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[1] It is Petitioner's belief that the interest of the City of Cranston will not be affected in any practical way by the matter here before the Court. A notice to this effect pursuant to S. Ct. Rule 12 is being filed.

[2] It is Petitioner's belief that the interest of Dennis Azar will not be affected in any practical way by the matter here before the Court. A notice to this effect pursuant to S. Ct. Rule 12 is being filed.

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No. 98-

In The

Supreme Court of the United States

October Term, 1998

RAYMOND J. AZAR,

Petitioner,

v.

THE RETIREMENT BOARD OF
THE EMPLOYEES' RETIREMENT SYSTEM OF
THE STATE OF RHODE ISLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

PETITION FOR WRIT OF CERTIORARI.

OPINIONS AND ORDERS BELOW.

The Supreme Court of Rhode Island has issued an opinion in this case, a copy of which appears in Appendix A to this Petition, beginning at page 1a. The matter is reported at 721 A.2d 872 (R.I. 1998). The Supreme Court of Rhode Island has also issued an order denying the Petition for Reargument. The Order appears in Appendix B to this Petition, beginning at page 21a. The order has not been reported.

The Superior Court of Rhode Island issued a Decision in this matter which is not reported. *Retirement Board of the Employees' Retirement System of the State of Rhode Island v. Azar*, C.A. No. 93-4204 (R.I. Super. Ct. decision filed Sept. 12, 1996). The Decision appears in Appendix E to this Petition beginning at page 31a.

JURISDICTION.

The opinion of the Supreme Court of Rhode Island was rendered on December 11, 1998. The order of the Supreme Court of Rhode Island denying the petition for reargument was entered on January 7, 1999. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

I. The Rhode Island Public Employee Pension Revocation and Reduction Act, 1992 R.I. Pub. Laws ch. 306, art. 1, § 8.

This case involves the Rhode Island Public Employee Pension Revocation and Reduction Act ("PEPRRA"), 1992 R.I. Pub. Laws, ch. 306, art. 1, § 8, as applied to the circumstances in this case. That act which was enacted in 1992 was codified at R.I. Gen. Laws § 36-10.1-1 *et seq.* and amended in 1995 by 1995 R.I. Pub. Laws ch. 212, § 1. The 1995

amendment does not affect the issues in this matter. In effect PEPRRA provides a mechanism to obtain the revocation or reduction of the public pension of a public employee or official who has been convicted or plead guilty to a felony related to public employment. PEPRRA is reprinted in full in Appendix D beginning at page 25a.

II. The Double Jeopardy Clause of the Fifth Amendment and the Eighth Amendment to the United States Constitution.

The constitutional provisions involved in this case are the double jeopardy clause of the Fifth Amendment and Eighth Amendment to the United States Constitution. The double jeopardy clause of the Fifth Amendment provides as follows: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb". The Eighth Amendment provides as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE.

I. *Travel of the Case.*

This matter was tried on the complaint of the Retirement Board of the Employees' Retirement System ("the Retirement Board") to revoke the pension benefits of Raymond

J. Azar ("Azar"), a member of the municipal Employees' Retirement System from the City of Cranston, Rhode Island.[3] The ultimate issue to be decided at trial was whether, in view of the fact that Azar had plead guilty to a felony related to his employment as the Public Works Director of the City of Cranston, his pension benefits should be revoked or reduced in any amount pursuant to PEPRRA.[4]

In his post-trial brief, Azar argued, among other things, that under the circumstances of his particular case, the application of PEPRRA violated the Fifth Amendment prohibition against double jeopardy and the Eighth Amendment prohibition against excessive fines and punishment. The trial

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[3] The facts pertinent to this Petition for Writ of Certiorari may be found in the opinion of the Rhode Island Supreme Court and/or the Decision of the Rhode Island Superior Court in this matter. The Rhode Island Supreme Court Opinion, *Retirement Board of the Employees' Retirement System of the State of Rhode Island v. Azar,* 721 A.2d 872 (R.I. 1998) is reprinted in Appendix A, beginning at page 1a. For convenience, further reference to this opinion will be cited to the page where such reference appears in the appendix. The Decision of the Rhode Island Superior Court, *Retirement Board of the Employees' Retirement Board of the State of Rhode Island v. Azar*, C.A. No. 93-4204 (filed September 12, 1996) is reprinted in Appendix E beginning at page 31a. For convenience, further reference to this decision will be cited to the page where such reference appears in the appendix. (A. 1a-2a; A. 31a).

[4] (A. 1a- 2a).

judge's decision did not reach Azar's constitutional argument.[5]

Instead, the trial judge ordered that the pension be revoked and then, pursuant to the discretion afforded the trial judge under PEPRRA, that some of the revoked benefits be paid to Azar on behalf of his dependent brother who has Down Syndrome, some to the City of Cranston to satisfy what the city and Azar had agreed was still owed as a result of Azar's conduct[6] and some to certain of Azar's relatives who had loaned him money to assist in making restitution to the City of Cranston pursuant to the plea agreement. After all these obligations were satisfied, the trial judge ordered that any remaining portion of Azar's public pension would be paid to Azar free of trust.[7]

The Retirement Board appealed the trial judge's decision to the Supreme Court of the State of Rhode Island. Azar filed a cross appeal renewing his constitutional arguments.[8]

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[5] *See* A. 31a-42a (no mention of the constitutional challenges).

[6] Raymond J. Azar had paid $225,000.00 in restitution as part of a plea agreement. By stipulation, both the City of Cranston and Mr. Azar agreed that the balance owed the City of Cranston, including actual losses, interest and costs incurred by the city as a result of Mr. Azar's conduct was $210,000.00.(A. 22a).

[7] (A. 1a; A. 41a-42a).

[8] (A. 2a).

Following argument, the Rhode Island Supreme Court vacated those portions of the trial judge's decision which directed certain amounts of Azar's public pension to be paid to his relatives in repayment of loans and then, once other obligations were met, to be paid to Azar free of trust. The Rhode Island Supreme Court also rejected Azar's claims that his state and federal constitutional rights to be protected against double jeopardy and excessive fines and punishment were violated in this matter.[9]

Subsequent to the Rhode Island Supreme Court's decision, Azar petitioned the Rhode Island Supreme Court for reconsideration. The Rhode Island Supreme Court denied that petition on January 7, 1999.[10]

The matter is here before this Honorable Court on Azar's petition for review of that part of the decision of the Rhode Island Supreme Court which rejected Azar's arguments that the application of PEPRRA to his circumstances violated his Fifth Amendment right against double jeopardy and his Eighth Amendment right against excessive punishment.

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[9] (A. 20a).

[10] (A. 21a).

STATEMENT OF FACTS.

A. *PEPRRA.*

In 1992, the Rhode Island Legislature enacted PEPRRA[11] which provides a mechanism for the revocation or reduction of the pension of any public official or employee who, after January 1, 1993, pleads guilty to a crime related to his or her public employment.[12] The mechanism is by means of a "civil action" in the Rhode Island Superior Court which the Retirement Board is required to initiate whenever "any public official or employee is convicted or pleads guilty or nolo contendere to any crime related to his or her public office or public employment."[13]

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[11] 1992 R.I. Gen. Laws, ch. 306, art. 1, § 8 (amended by 1995 R.I. Pub. Laws ch. 212, § 1). PEPRRA is reprinted in Appendix D beginning at page 25a. Further reference to PEPRRA will be to the citation in the codification as it appeared in the Rhode Island General Laws and as it appears in the public law.

[12] R.I. Gen. Laws § 36-10.1-3(a) (A. 26a-27a).

[13] R.I. Gen. Laws § 36-10.1-3(b), (A. 27a).

B. *Petitioner's Public Service, Criminal Conduct and Criminal Sentence.*

Petitioner is a former municipal employee of the City of Cranston and a former state employee of the State of Rhode Island who had been employed in public service in three distinct capacities approximately 30 years.[14] Azar's last public employment was as Director of Public Works for the City of Cranston for approximately six and one-half years. Regrettably, during the last years of his employment as Director of Public Works he became involved in criminal activities associated with his employment.[15]

On July 26, 1993, Azar plead guilty to one count of violating R.I. Gen. Laws § 17-15-1, *et seq.*, the Racketeer Influenced and Corrupt Organization Act ("RICO"), which count was predicated on certain acts alleged to have occurred during the time he was serving as Director of Public Works.[16] Although Azar did not dispute that his participation in the predicate activities were sufficient to satisfy the "racketeering activity" element of the state RICO charge, counsel for Azar informed the court that Azar disputed that the amount he received as a result of his involvement in the predicate activities in which he did participate totaled

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[14] (A. 32a).

[15] (A. 36a).

[16] (A. 2a; 32a).

$350,000.00, the amount listed in the RICO charge. He admitted that the amount from which he benefited, either directly or indirectly, was approximately $225,000.00 — the amount of restitution he agreed to and in fact did pay.[17] The court accepted Azar's plea. He was sentenced to ten years imprisonment, five to serve, five years suspended and five years of probation. He was also ordered to pay restitution in the amount of $225,000.00[18] which has been paid in full. Azar is currently on probation.

C. *Petitioner's Pension.*

Azar retired from public service in May of 1992. Since then he has received pension benefits from the Cranston Municipal Retirement System. At the time of his retirement, Azar, who then was 53 years old, was eligible to receive pension benefits because he had in excess of 30 years of service as a public employee.[19]

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[17] (A. 39a).

[18] (A. 32a).

[19] (A. 33a).

D. *The City of Cranston.*

The City of Cranston filed a civil action currently pending in the United States District Court for the District of Rhode Island in which Azar is one of several defendants. The caption of that matter is *City of Cranston vs. Azar*, C.A. No. 94-0660 (D.R.I. filed Dec. 9, 1994). In that lawsuit, the City of Cranston is seeking damages from Azar and others under the federal Racketeering Influenced Corrupt Organization Act, Title 18 U.S.C. § 1969 *et seq.* as well as its state analogue. The same activities that form the basis of the RICO charge and the instant pension revocation matter are included among the activities giving rise to the counts in the federal action against Azar.[20]

The City of Cranston, the plaintiff in the federal case as well as the victim with respect to the crime to which Petitioner has plead, was permitted to intervene in this matter to protect its interests in Petitioner's pension as a means to recoup its damages.[21] Petitioner and the City of Cranston have stipulated that the federal court action will be dismissed against Petitioner in consideration of the payment by him to the City of Cranston of an additional sum of $210,000.00 payable over approximately ten years from his pension benefits, provided his pension is not revoked or reduced. (A copy of the Stipulation is found in Appendix C beginning at page

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[20] (A. 22a-23a).

[21] (A. 31a-32a).

22a.) Petitioner and the City of Cranston have stipulated that Petitioner owes the City of Cranston $210,000.00 in damages including costs and interests.[22]

REASONS FOR GRANTING THE PETITION.

GIVEN THE FACTS OF THIS CASE, THE RHODE ISLAND SUPREME COURT HAD DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

I. Under the circumstances, any reduction or revocation of Azar's pension violates the prohibition against double jeopardy.

The Double Jeopardy Clause provides that "no person [shall] be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const., amend. 5. The clause protects against the imposition of successive multiple *criminal* punishments for the same offense." *Hudson* v. *United States*, 522 U.S. 93 (1997).

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[22] This amount is approximately equal to the difference, with interest and costs, between the total amount listed by the State of Rhode Island in the RICO charge plus costs and the amount of restitution already paid to the City of Cranston by Azar. (A. 34a).

In rejecting Azar's claim that any revocation or reduction of his public pension would violate the double jeopardy prohibition, the Rhode Island Supreme Court in effect held that any revocation or reduction of a public employee's pension under PEPRRA would not involve a criminal punishment but a civil sanction and, therefore, did not implicate the double jeopardy clause.[23] The Rhode Island Supreme Court stated that pension revocation or reduction pursuant to PEPRRA, like the sanction under consideration in *Hudson*, "specifically denotes its civil character and places civil authority in an adjudicative entity to enforce its provisions through monetary penalties."[24] The Rhode Island Supreme Court then discussed whether, despite what that court found to be a civil remedy, there was the "clearest proof that the purpose and effect of PEPRRA was to exact criminal punishment."[25] After consideration of several factors, the Rhode Island Supreme Court held that, on balance, "factors confirming the Act's presumptive civil nature" overrode all other factors.[26] Respectfully, in so finding, the Rhode Island Supreme Court misapplied the *Hudson* analysis, failed to consider the teachings of *United States* v. *Halper,* 490 U.S. 435 (1989), and entirely discounted the inherent criminal

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[23] (A. 17a).

[24] (A. 16a).

[25] *Id.*

[26] (A. 17a).

nature of the PEPRRA sanctions — sanctions which can be imposed *only* upon and on account of a criminal conviction or plea and based *only* on the very conduct underlying the conviction or plea.

The Teachings of *Hudson* v. *United States.*

Under *Hudson*, this Court instructed that although the nature of a criminal punishment as civil or criminal initially is a matter of statutory construction, if the statutory scheme is so punitive either in purpose or effect, then what may have appeared to have been labeled a civil remedy by a legislature is transformed into a criminal penalty for double jeopardy purposes. 520 U.S. at 99, citing, *United States* v. *Ward*, 448 U.S. 242, 248 (1980). The consideration of whether a sanction construed to be civil in effect actually rises to the level of a criminal penalty involves an analysis of several factors including the following: (1) whether the sanction includes a disability or restraint; (2) whether the sanction historically has been regarded as punishment; (3) whether the sanction attaches only on a finding of *scienter*; (4) whether the operation of the sanction promotes the punishment's goals of retribution and deterrence; (5) whether the conduct to which the sanction applies is a crime; (6) whether an alternative purpose for the sanction may rationally be assigned to the sanction; and, (7) whether the sanction appears excessive in relation to the alternative purpose. *Hudson* v. *United States*, 520 U.S. at 99-100, citing, *Kennedy* v. *Mendoza-Martines*, 372 U.S. 144, 168-69 (1963). If the statutory scheme on its face

defines the sanction as civil, then "'only the clearest proof' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Hudson* v. *United States,* 522 U.S. at 100, citing, *United States* v. *Ward*, 448 U.S. at 249.

Respectfully, the Rhode Island Supreme Court misapplied both prongs of the *Hudson* analysis to the circumstances in this case. That is because fairly read, the penalty of pension revocation or reduction under PEPRRA is inherently criminal; and, even if it were not, the purpose and effect of the penalty is clearly criminal.

The statutory scheme of PEPRRA does not expressly define pension revocation or reduction as a civil penalty. Nowhere in the statute does the legislature address its intention as to the nature of the pension revocation or reduction sanction.

PEPRRA does provide that the mechanism by which pension revocation or reduction is to be considered by a court is by means of a civil action. However, nowhere does the PEPRRA statute categorize the penalty as civil or criminal. Establishing a civil action as the process to be used to determine whether to revoke or reduce a public pension, or not to do either, does not amount to a legislative pronouncement that any reduction or revocation is intended to be a civil not a criminal penalty. It merely sets forth what due process mechanism must be used when considering the imposition of such a penalty.

The language of the PEPRRA statute gives every indication of the criminal nature of the penalty. The legislature expressly provided that reduction or revocation would not be

involved unless and until there was a conviction or a plea to a felony related to public employment provided that any such plea must constitute a conviction under the laws of the State of Rhode Island.[27] Absent a "conviction" there would be no civil action under PEPRRA to determine whether any further penalty should be imposed.

The Rhode Island Legislature invokes the term "crime" or "criminal" eight times in the PEPRRA statute and the term "convicted" or "conviction" six times. Additionally, the PEPRRA statute describes seven distinct crimes in § 36-10.1-2(a)(1)-(3) as well as a wide range of other felonies in § 36-10.1-2(a)(4) which would trigger a consideration of whether any pension reduction or revocation should be imposed under PEPRRA.[28] In stark contrast and despite the Rhode Island Supreme Court's statement that the PEPRRA statute "repeatedly designates the [Retirement B]oard's action in seeking the revocation or reduction of pension benefits as civil in nature,"[29] , the terms "civil" or "civil action" appear only four times and in only two sub-sections of § 36-10.1-3 of PEPRRA.[30]

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[27] R.I. Gen. Laws § 36-10.1-2(c) and § 36-10.1-3(a) (A. 26a-27a).

[28] (A. 25a-26a).

[29] (A. 15a).

[30] R.I. Gen. Laws § 36-10.1-3(b) and (c) (A. 26a-29a).

Fairly read, the language of PEPRRA implies in every way that the Rhode Island Legislature intended the revocation or reduction of a public pension as an additional sanction to be imposed under certain circumstances when a public official or public employee committed a felony related to public employment or office. Were it otherwise, the application of PEPRRA would not be limited to felonies related to public employment or office. Absent such a crime, there could be no pension revocation or reduction under PEPRRA. Thus, a PEPRRA sanction is inherently criminal and there is no legislative expression to the contrary.

Even if the legislation were construed to establish a civil penalty, a balancing of the factors first enumerated in *Kennedy* v. *Mendoza-Martinez, supra,* and affirmed in *Hudson, supra,* establish that both the effect and purpose of the reduction or revocation of a public pension under PEPRRA is so punitive as to override any legislative intent that the sanctions were intended to be civil. Of the seven "guideposts" listed in both *Kennedy* and *Hudson, supra,* only one as applied to the facts in this case mitigates in favor of labelling pension revocation or reduction as a civil penalty. That is because the revocation or reduction of a public pension does not in any real way involve an "affirmative disability or restraint." *Id.* All other applicable factors in this case unquestionably demonstrate that pension revocation or reduction under PEPRRA is a criminal penalty.

With respect to *scienter,* the penalties of PEPRRA come into play only if there is a conviction of or a plea to, which is tantamount to a conviction of, certain felonies relating to public employment or office. It is difficult to imag-

ine any felony falling within this category of felonies which would not involve the element of *scienter*.

With all due respect to the Rhode Island Supreme Court that found to the contrary, the revocation or reduction of a public pension to which a "public employee is otherwise entitled" under PEPRRA is patently retributive *i.e.* something demanded or given in payment or as punishment.[31] Moreover, it would be ingenuous to claim that the Legislature did not intend that the existence of PEPRRA have, or that PEPRRA does not actually have, a deterrent effect with respect to the manner in which public employees conduct themselves in the course of their public employment. Indeed the Rhode Island Supreme Court declined to comment as to whether PEPRRA had any deterrent effect or purpose.

Furthermore, by PEPRRA's express language, all conduct to which the reduction or revocation of any public pension would attach must be conduct that is already a crime. The statute applies only if a public employee has been convicted or plead to certain felonies related to public employment.

Historically in Rhode Island, the only instance in which the revocation or reduction of a public pension to which a public employee would otherwise be entitled has occurred is following the commission of a crime. *See Matter of Almeida*, 611 A.2d 1375, 1383 (R.I. 1992) (public pension of judge revoked for crimes related to judicial service). There is no precedent nor statutory scheme in Rhode Island

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[31] *Black's Law Dictionary* (6th ed. 1990).

for the imposition of the revocation or reduction of a pension absent criminal activity.

Finally, there is no alternative purpose that could rationally be connected to the revocation or reduction of a public pension to which the sanction of PEPRRA may be assigned. As such, there can be no consideration of whether the sanction appears excessive in relation to that alternative purpose.

Even if on the face of PEPRRA, it appeared that the Rhode Island Legislature intended to impose a "civil" sanction, the balancing of the *Kennedy/Hudson* guideposts as applied to this case demonstrate by clear proof that the statutory scheme is so punitive as to transform what may have been intended to be a civil remedy into a criminal penalty. As such, the sanctions of PEPRRA are subject to double jeopardy considerations.

The Teachings of *United States* v. *Halper.*

Although the Rhode Island Supreme Court did not address Petitioner's argument under *United States* v. *Halper, supra,* the teachings of *Halper* bolster Petitioner's position that the revocation or reduction, in any amount, of his pension is a successive criminal penalty prohibited by the double jeopardy clause. In *Halper,* this Court held that double jeopardy prohibits subjecting a defendant who already has been punished in a criminal prosecution to an additional sanction to the extent that the second sanction may not fairly be characterized as remedial but only as a deterrent and thus ren-

dering the second proceeding effectively criminal in nature. 490 U.S. at 448-49. This Court noted that a "civil sanction that cannot be fairly said solely to serve a remedial purpose, but rather can only be explained as serving either a retributive or deterrent purpose, is punishment, as we have come to understand the term." *Id.* This Court also cautioned that in determining whether a subsequent penalty is remedial, a court may look to the actual damage to the government as well as its costs. *Id.* at 449. If, however, a subsequent penalty cannot be fairly characterized as necessary to make the government whole, then double jeopardy prohibits the imposition of the multiple punishment. *Id.*

In the instant case, there is no dispute that Petitioner was sentenced to jail and ordered to pay restitution in the amount of $225,000.00 — which he paid.[32] Likewise, it is evident that any reduction, much less a revocation, would have no remedial effect. That is because Petitioner already paid $225,000.00 in full restitution for all the amounts he consistently maintained that, either directly or indirectly, he illegally obtained from the City of Cranston; and, provided he is allowed to keep his pension, Petitioner has agreed to pay an additional $210,000.00 to the City of Cranston which represents the total amount that the City of Cranston itself claims is owed on account of Petitioner's criminal conduct -- — including costs and attorneys' fees.[33] A revocation of his

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[32] (A. 32a).

[33] (A. 22a).

pension, much less any reduction in benefits would not amount to any appreciable savings for the City of Cranston.[34]

Therefore, any reduction or revocation of Petitioner's pension cannot possibly serve any remedial purpose. It would amount only to an additional punishment for criminal conduct in violation of the constitutional prohibition against double jeopardy.

II. Under the Circumstances, the Revocation or Reduction of Petitioner's Public Pension Violates the Eighth Amendment Prohibition Against Excessive Fines and Punishment.

The Eighth Amendment bans the imposition of excessive punishment. This constitutional guarantee prohibits penalties that are grossly disproportionate to the offense. *Solem v. Helm,* 463 U.S. 277, 284-90 (1983). This Court has recognized that a sanction such as forfeiture may be considered punishment for purposes of an excessive punishment analysis. *Austin* v. *United States*, 509 U.S. 602, 621-22 (1993). Recently, this Court specifically adopted the gross disproportionality standard to considerations of whether a punitive forfeiture is excessive. *United States* v. *Bajakjian*, 524 U.S. ____, 118 S.Ct. 2028, 2037 (1998). This Court has not had occasion to comment with respect to the applicability of the Eighth Amendment to the revocation or reduction of a

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[34] *See* (A. 33a).

public pension on account of criminal conduct. However, as with a forfeiture, the determination of whether the revocation or reduction of a pension is excessive should turn on an analysis of whether the gravity of the offense is grossly disproportionate to the harshness of the penalty. *Id.* Additionally, if appropriate, the determination should include a consideration of the punishment imposed on other criminals in the same jurisdiction. *Solem* v. *Helm, supra* at 290-91.

The matter before the Court is the first case to be considered by the Rhode Island Supreme Court involving a public pension that was revoked or reduced pursuant to PEPRRA, which was enacted in 1992. The Rhode Island Supreme Court however has considered the constitutionality of the revocation of a judicial pension prior to the enactment of PEPRRA. *Matter of Almeida, supra.*

In *Almeida,* the Rhode Island Supreme Court held that the revocation of a judicial pension did not violate article 1, § 8 of the Rhode Island constitution which prohibits excessive punishment. In so holding, the court noted that the conduct there in question had to be evaluated in light of the defendant's unique position as a judge. The Rhode Island Supreme Court in a subsequent decision noted that the conduct in question in *Almeida* "cut to the heart of judicial service" in that it involved an "unbiased arbiter and the objective decision maker". *Smith* v. *Retirement Board of the Employees' Retirement System of the State of Rhode Island,* 656 A.2d 186, 190 (R.I. 1995). The court concluded that because of the judicial office that was betrayed, revocation was not disproportionate to the crime but instead operated pub-

licly to recognize and condemn such serious judicial misconduct and abuse of power.

Without minimizing the seriousness of Petitioner's conduct, the effect it has had on the public's confidence in public employees' pales in comparison to the effect of the judicial misconduct in *Almeida*. More Importantly, Petitioner has served his sentence and is now on parole. He has paid all restitution as ordered by the state courts.[35] He has agreed to pay an additional $210,000.00 to the City of Cranston which is the amount the city claims will make it whole.[36] He has forfeited his license as a professional engineer.[37] The revocation or reduction of his pension would serve no further remedial purpose. It would be advancing no goal of punishment not already met. Furthermore, Petitioner provided some 25 years of public service during which there never has been any indication that he rendered anything but honorable service.[38] Consequently, as compared to his misconduct during the last years of his public service and given the other penalties he has incurred as a result of his criminal conduct, a revocation or reduction of his public pension would be grossly disproportionate to the offense and therefore a violation of the Eighth Amendment.

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[35] (A. 32a).

[36] (A. 22a).

[37] (A. 36a).

[38] *Id*.

CONCLUSION.

For the above-stated reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

December 11, 1998

Supreme Court
No. 97-351-Appeal.
(PC 93-4204)

The Retirement Board of the Employees' Retirement System of the State of Rhode Island and City of Cranston :

v. :

Raymond J. Azar. :

Present: Weisberger, C.J., Lederberg, Bourcier, Flanders, and Goldberg, JJ.

OPINION

Flanders, Justice. We review here a Superior Court judgment carving up the pension of a corrupt, former municipal employee. Attempting to redress the financial wounds inflicted by this employee's venality, the trial justice allocated the employee's pension among the retired employee, his dependent brother, certain of his other relatives, and his former municipal employer. For the reasons explained below, (1) we reverse and vacate certain portions of the judgment that have been challenged on appeal: namely, (a) the use of the employee's revoked pension benefits to repay his relatives' loans to him, and (b) the eventual reinstatement of

the employee's pension; and (2) we affirm the remainder of the judgment.

Facts and Travel

After he retired from his job as Public Works Director for the City of Cranston (city) and began to collect his pension, defendant, Raymond J. Azar (defendant or Azar), was convicted of racketeering for accepting bribes and other favors in exchange for allowing contractors to overcharge the city on various construction projects. For over six years while he was serving as the city's Public Works Director, defendant engaged in a pattern of criminal conduct that sorely abused the public trust reposed in him. Upon learning of Azar's treachery and seeking to revoke his pension, the Retirement Board (board) of the Employees' Retirement System of the State of Rhode Island (retirement system) filed a Superior Court lawsuit against him under the Public Employee Pension Revocation and Reduction Act (PEPRRA), G.L. 1956 chapter 10.1 of title 36.

The board appeals from the judgment that entered as a result of this lawsuit, and defendant has filed a cross appeal challenging the constitutionality of any reduction of his pension benefits. A Superior Court justice ordered the retirement system to pay monthly pension benefits to defendant in trust and then ordered him, as trustee, to use the pension funds: (1) to pay $1500 per month for the living expenses of Dennis Azar, defendant's mentally disabled and dependent brother; (2) to reimburse the city for the remaining financial losses defendant had caused it to sustain (earlier, defendant had made a partial restitutionary payment to the city); and (3) to

repay monies loaned to defendant by his brothers, sisters, and nephew (relatives) to enable him to make the earlier, partial restitutionary payment to the city for a portion of the losses he had caused it to suffer. Upon defendant's repayment of the debts he owed to the city and his relatives via the monthly pension benefits that were to be paid to him in the future, the court ordered that the retirement system reinstate the monthly pension payments for defendant's own use, subject only to his ongoing responsibility to devote the first $1500 of such payments to care for his dependent brother. We proceed now to address the issues raised by the parties' appeals.

I.

Mandatory vs. Discretionary Pension Revocation or Reduction

The board argues on appeal that PEPRRA categorically prohibits retired public employees/officials from receiving any part of their public pensions if any portion of their service was dishonorable. Because of PEPRRA's express provisions giving the trial justice discretion to permit a pension reduction for dishonorable service rather than mandating a complete revocation, we disagree with this aspect of the board's argument. Nevertheless, we hold that, given the substantial benefits defendant already has derived from the pension payments he has received to date, and the substantial benefits he will derive from the city's settlement of its restitution claims against him (in exchange for receiving $210,000 of Azar's future pension monies), the trial justice

abused his discretion under PEPRRA by providing for the eventual reinstatement of defendant's public pension.[1]

PEPRRA sets forth a multi-factored analysis for the trial justice to use in deciding whether to revoke or reduce the pension benefits of a public employee/official who has been convicted of a job-related crime. After indicating that honorable service is presumed and required before it will allow payment of retirement benefits, PEPRRA requires the trial justice to analyze whether the pension to which the "(ii) * * * public [employee/official] **is otherwise entitled** should be revoked **or diminished** and, if so; (iii) [i]n what amount or **by what proportion** such revocation or reduction should be ordered." Section 36-10.1-3(c)(1)(ii), (iii). (Emphases added.) Read together, these two provisions indicate a legislative intention for the trial justice to make a discretionary determination whether to reduce or revoke, in whole or in part, the pension that the public employee/official would otherwise be entitled to receive but for having been convicted of a crime relating to his or her public office. The role of the trial justice is not, as the board would urge, to attempt a total recomputation of what pension, if any, the public employee/official is otherwise entitled to receive. That remains

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[1] The board, however, does not challenge that portion of the judgment providing for monthly payments, in trust, to Dennis Azar, nor does it object to those portions of the judgment requiring that pension payments be made to Azar in trust for repayment of the city until Azar's debt to that municipality is extinguished. Therefore, we have no warrant to disturb these aspects of the judgment.

the function of the retirement system.[2] Nor does the statute necessarily require the trial justice to subtract those years of dishonorable service from the employee/official's overall years of public employment because they were proven to be dishonorable. Although PEPRRA might permit the trial justice to alter the methodology used to calculate the pension that a public employee is otherwise entitled to collect, he or she is not required by law to do so. Rather, any pension reduction or revocation should be made in accordance with PEPRRA's provisions -- that is, a revocation or diminution of this "otherwise entitled" pension benefit by whatever "amount or * * * proportion," if any, that the Superior Court shall determine after weighing the requirement of honorable service, the severity of the crime, the amount of monetary loss caused by the employee's misconduct, the degree of public trust reposed in the employee, and such other factors as the court believes justice requires it to consider. Section 36-10.1-3(c)(1)(ii), (iii), (2).

The board's reading of PEPRRA -- namely, "dishonorable service means no pension" -- would obviate the need for PEPRRA altogether. The General Assembly obviously would not have gone to the trouble of enacting PEPRRA -- with its mandated consideration of three basic questions pursuant to a multi-factored and largely discretion-

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[2] General Laws 1956 §§ 36-10-1 to -4, -6 to -9.4, -9.6 to -24, -31 to -39; G.L. 1956 §§ 16-15-13 to -17; G.L. 1956 § 45-21.1-1; G.L. 1956 §§ 8-3-13 to -14; G.L. 1956 §§ 28-30-1 to -4.1, -5 to -23; G.L. 1956 §§ 31-43-1 to -7, -9 to -17; G.L. 1956 §§ 42-28-1 to -37,-45 to -49.

ary balancing test (see § 36-10.1-3(c)(2)) -- if it really intended to eliminate all possibility of a public employee/official receiving any pension at all after he or she had been convicted of a crime related to any portion of his or her public service, however small and relatively inconsequential that period may have been in relation to the total years of such service. See **Brennan v. Kirby**, 529 A.2d 633, 637 (R.I. 1987) (stating that courts should not construe a statute "in a way that would attribute to the Legislature an intent that would * * * defeat the underlying purpose of the enactment"); see also **Kirby v. Planning Board of Review of Middletown**, 634 A.2d 285, 290 (R.I. 1993) (same). Moreover, the board's suggested interpretation of PEPRRA (dishonorable service means no pension) was precisely the state of the common law with respect to pension revocation or reduction before the enactment of PEPRRA. See **Matter of Almeida**, 611 A.2d 1375 (R.I. 1992). And yet, as we have noted previously, the General Assembly intended PEPRRA to supersede **Almeida**'s pension revocation or reduction mandate. See **Smith v. Retirement Board of the Employees' Retirement System of Rhode Island**, 656 A.2d 186, 190 (R.I. 1995). Consequently, the trial justice was not required, as the board asserts, to revoke defendant's entire pension simply because portions of his thirty-two years of public service were shown to be dishonorable. On the contrary, the trial justice was required to undertake PEPRRA's statutorily prescribed, multi-factored analysis to decide "(ii) [w]hether the retirement or other benefits or payments to which the public official or public employee is otherwise entitled should be revoked or diminished and, if so; (iii) [i]n what

amount or by what proportion such revocation or reduction should be ordered." Section 36-10.1-3(c)(1)(ii), (iii).

Here, the trial justice did assay such an analysis. However, our review of PEPRRA's five determinative factors -- as applied to the circumstances of this case -- causes us to conclude that the trial justice abused his discretion in allowing for the eventual reinstatement of defendant's pension benefits. First, nearly all of defendant's service as the city's Director of Public Works was unequivocally dishonorable. The malfeasance in question was not an isolated, one-time transgression, but a multi-year, long-term course of conduct involving the loss of hundreds of thousands of public dollars pursuant to which defendant lined his own pockets with his ill-gotten gains. Second, the nature of defendant's misconduct, namely, criminal racketeering, was very grave in relation to the relatively high degree of discretion and responsibility inherent in his public office. The defendant's admission of his wrongdoing -- a factor upon which the trial justice placed great weight -- does not mitigate its severity. Third, the city suffered a substantial loss as a result of defendant's conduct approximately $435,000 -- while he personally profited from the bribes and other gratuities that were furnished to him. Fourth, the city and its taxpayers reposed a substantial quantum of trust in defendant. At a minimum, he was in a position to allow construction contractors to overcharge the city hundreds of thousands of dollars.

Finally, notwithstanding the enormity of his wrongdoing, defendant already has received substantial benefits from his pension. Specifically, defendant has received and benefited from pension payments in excess of $320,000 that were paid to him during the five-year period that the board's

unresolved PEPRRA suit has been pending in the courts. Moreover, because the board chose not to appeal that portion of the Superior Court's judgment that ordered payment of his revoked pension benefits to the city, defendant thereby will be relieved not only from his obligation to defend against the city's federal lawsuit seeking restitution from him, but also from his prospective liability to the city for an additional $210,000. Although, for the reasons described below, we do not believe that PEPRRA authorized the trial justice to order this payment to the city, the board chose not to appeal this part of the judgment, and therefore, we do not disturb this aspect of the court's ruling. However, the board has challenged that part of the judgment that reinstates defendant's pension benefits after certain of his relatives and the city have been reimbursed completely for their losses. It is this windfall -- namely, the eventual reinstatement of Azar's pension benefits -- that we do reverse because we conclude that, given the egregious circumstances of defendant's violation of his public trust and the hundreds of thousands of dollars worth of benefits he already has received to date and will receive in the future, it was an abuse of the trial justice's discretion under these circumstances to order such a reinstatement.

II.

Repayment of Loans From Relatives

The board also argues that the trial justice erred in ordering Azar to use his pension benefits to repay the loans he received from his relatives. We agree. Although PEPRRA

grants the trial justice substantial discretion to determine whether to revoke or reduce a public employee/official's public pension after he or she has been convicted of a crime related to public employment, it authorizes payment of the revoked or reduced pension funds only to a pensioner's innocent spouse, dependents, and/or designated beneficiaries. Because defendant's relatives and other non-judgment creditors do not fall within any of these three enumerated categories of payees, the trial justice exceeded his authority in ordering defendant to pay any portion of his revoked or reduced pension benefits to them.

Section 36-10.1-3(d) of PEPRRA provides:

> "If the superior court determines that the retirement or other benefits or payments of a public official or public employee should be revoked or reduced under this chapter, it may, in its discretion and after taking into consideration the financial needs and resources of any innocent spouse, dependents and/or designated beneficiaries of the public official or public employee, order that some or all of the revoked or reduced benefits or payments **be paid to any innocent spouse, dependent or beneficiary as justice may require**." (Emphasis added.)

After considering the financial needs and resources of any innocent spouse, dependents, and/or designated beneficiaries of the public employee/official, a trial justice has the discretion under PEPRRA to order payment of some or all of the

pensioner's revoked or reduced benefits to "any innocent spouse, dependent or [designated] beneficiary."[3] By specifying only three types of payees who may receive a public employee/official's revoked or reduced pension benefits, we are of the opinion that the General Assembly manifested its intent to exclude other possible payees from receiving such monies. Accordingly, applying the statutory-construction principle of expressio unius est exclusio alterius, we conclude that any party who is not an innocent spouse, dependent, or designated beneficiary of the pensioner is not eligible to receive any of his or her revoked or reduced pension bene-

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[3] Although not argued by defendant, PEPRRA provides that the trial justice shall consider the financial needs of, inter alia, "designated beneficiaries." It then provides that the trial justice may order payment to any "beneficiary," omitting the earlier modifier "designated" from this second mention of the term. It may be argued that, by omitting the word "designated" from this second mention of the word "beneficiary" when discussing potential third-party payees of the revoked pension benefits, the General Assembly intended that the potential payees need not be "designated" beneficiaries, but rather may be any individual arguably qualifying as a mere beneficiary of the pensioner. Although this second use of the term "beneficiary" appears to us to be just a shorthand reference back to PEPRRA's earlier mention of "designated beneficiaries" in the same sentence, we need not decide this issue because the relatives were not shown to be qualified as either "designated" or otherwise existing beneficiaries of Azar.

fits. The defendant's relatives do not fall within any of these three enumerated categories. First, none is married to defendant. Second, Azar's relatives are not ipso facto his dependents. Third, none of these relatives qualified as designated beneficiaries under his pension plan, nor was any evidence introduced establishing their status as some kind of other beneficiary vis-à-vis Azar before the trial justice amended the judgment to establish them as such.

Section 36-10.1-4 of PEPRRA further buttresses our conclusion that the General Assembly did not intend for a pensioner's mere non-judgment creditors to recover their debts through a mandated diversion of the public employee/official's pension benefits. Specifically, § 36-10.1-4(a) provides that a public employee/official whose pension has been revoked is entitled to a return of his or her contribution paid into the pension fund.[4] Subsection (b) provides that a public employee/official subject to pension reduction is "entitled to a pro rata return of a portion of his or her contribution paid into the relevant pension fund(s) in an amount

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[4] Although the court must first revoke or reduce the public employee/official's pension before it can order payments of such benefits to any spouse, dependent, and/or designated beneficiary, the pensioner is not entitled to a return of any contributions attributable to such diverted pension benefits. Otherwise, the pensioner would receive a double benefit and the retirement system would suffer a double penalty by paying out both pension benefits and the allocable contributions relating to such benefits.

proportionate to the amount of any such reduction, without interest." Section 36-10.1-4(b). Finally, subsection (c) of § 36-10.1-4 provides that:

> "Notwithstanding the provisions of subsections (a) and (b) of this section, no payments in return of contributions shall be made or ordered unless and until the superior court determines that the public official or public employee whose retirement or other benefits or payments have been revoked or reduced under this chapter has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses incurred by any person as a result of the subject crime related to public office or public employment. If the superior court determines that the public official or employee whose retirement or other benefits or payments have been revoked or reduced under this chapter has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction, it may order that any funds otherwise due to the public official or public employee as a return of contribution, or any portion thereof, be paid in satisfaction of the judgment or order."

Nowhere in these three subsections does the General Assembly allow pension benefits to be used for payments to

mere non-judgment creditors of the pensioner. However, subsection (c) of § 36-10.1-4 does provide for the possibility of a prioritized payment to judgment creditors for restitution of any losses caused by the pensioner's crimes -- but only by using contributed funds that otherwise would have to be returned to the pensioner after revoking his or her pension. Even then, the retirement system only can make such payments to judgment creditors whose obligations remain unsatisfied by the pensioner. Given these express provisions of PEPRRA, it would be anomalous to allow mere non-judgment creditors (let alone related lenders, as in the present case) to leapfrog over judgment creditors in their receipt of the public employee/official's pension benefits. Such a reading of PEPRRA would render nugatory § 36-10.1-4's express provisions allowing judgment creditors to be paid through a reallocation of the pensioner's much smaller retirement contributions. But these provisions do not allow the trial justice to utilize the larger amounts that would be available if the revoked or reduced pension benefits could be tapped to do so.

Although the judgment, as amended, ordered payment of Azar's pension benefits in trust to him, and not directly to his relatives, we look to the identity of the final payee of the benefits in deciding whether the trial justice acted within his or her discretion in fashioning an appropriate PEPRRA order. We are of the opinion that it would violate the plain language of PEPRRA to allow the trial justice to accomplish via the order or judgment in a given case what PEPRRA does not otherwise permit: namely, that a revoked or reduced pension payment be made directly to a convicted pensioner's mere relatives or other non-judgment creditors

who do not qualify as a spouse, dependent, or designated beneficiary of the pensioner. We therefore reverse that portion of the judgment ordering repayment of the relatives' loans from Azar's pension funds, as this aspect of the trial justice's ruling was not within his discretion.

III.

Constitutionality of PEPRRA

Lastly, we deny and dismiss defendant's cross appeal, wherein he claims that PEPRRA violates the constitutional prohibitions against double jeopardy and cruel and unusual punishment. Applying the analysis set forth in **Hudson v. United States**, 522 U.S. ___, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997), to PEPRRA's pension revocation and reduction provisions, we conclude that PEPRFA provides for a civil sanction that, under the circumstances, violates neither the prohibition against double jeopardy nor the bar against cruel and unusual punishment.

A. Double Jeopardy

The Double Jeopardy Clause proscribes the imposition of multiple criminal punishments for the same offense in successive proceedings. **See Hudson**, 522 U.S. ___, 118 S. Ct. 488, 139 L. Ed. 2d 450. To determine whether a post-conviction sanction is criminal or civil in nature, a reviewing court first must examine the face of the statute. If the statute explicitly denotes its civil character, then the punishment is presumed to be civil in nature. Second, the court must look

to the statute's purpose and effect. Only the clearest proof that the purpose and effect of the statute is to exact criminal punishment will rebut a presumption that the statute provides for only a civil sanction. **See id.**[5]

PEPRRA explicitly provides that if a public employee/official has committed a "crime related to [his] public office or public employment," then the board shall "[i]nitiate a **civil** action * * * for the revocation or reduction of any retirement or other benefit * * *." Section 36-10.1-3(b)(1). (Emphasis added.) In addition, the Act repeatedly designates the board's action in seeking the revocation or reduction of pension benefits as civil in nature. Chapter 10.1 of title 36. Therefore, under **Hudson**, a presumption exists that a PEPRRA sanction is in fact civil in nature. The defendant

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[5] "[T]he [following] factors provide useful guideposts (1) '[w]hether the sanction involves an affirmative disability or restraint'; (2) 'whether it has historically been regarded as a punishment'; (3) 'whether it comes into play only on a finding of scienter'; (4) 'whether its operation will promote the traditional aims of punishment-retribution and deterrence'; (5) 'whether the behavior to which it applies is already a crime'; (6) 'whether an alternative purpose to which it may rationally be connected is assignable for it'; and (7) 'whether it appears excessive in relation to the alternative purpose assigned.'" **Hudson v. United**, 522 U.S. ___, 118 S. Ct. 488, 493, 139 L. Ed. 2d 450, 459 (1997) (quoting **Kennedy v. Mendoza-Martinez**, 372 U.S. 144, 168-69, 83 S. Ct. 554, 567-68, 9 L. Ed. 2d 644, 661 (1963)).

may overcome this presumption only by showing, via the clearest proof, that the purpose and effect of PEPRRA is to exact criminal punishment. We are of the opinion that PEPRRA's pension reduction or revocation is not tantamount to criminal punishment. Rather, it is analogous to the statute scrutinized in **Hudson**, in that it explicitly denotes its civil character and places civil authority in an adjudicative entity to enforce its provisions through monetary penalties. **Hudson**, 522 U.S. ___, 118 S. Ct. 488, 139 L. Ed. 2d 450.

In addition, applying **Hudson**'s factors to PEPRRA further demonstrates its civil nature. First, an "affirmative disability or restraint" requires imprisonment or some sanction "approaching * * * imprisonment." **Hudson**, 522 U.S. at ___, 118 S. Ct. at 496, 139 L. Ed. 2d at 462 (holding that debarment of banking officers' licenses is not an affirmative disability or restraint). Thus, revocation or reduction of a public pension does not constitute an affirmative disability or restraint. Second, revocation or reduction of a pension historically has not been regarded as a criminal punishment. Instead, a public employee/official's pre-PEPRRA entitlement to receive a pension was implicitly conditioned on honorable completion of public service. **See Almeida**, 611 A.2d at 1383. Even under PEPRRA, when the public employee/official does not satisfy this sine qua non of his employment, his or her right to receive a public pension is likewise revocable or reducible. **See id.** Third, the possibility of a reduction or revocation of a former public employee/official's pension does not serve to exact retribution, but again, is the ineluctable consequence of his or her failure to satisfy an inherent condition of his or her public employment. **See id.** Fourth, it can hardly be argued that a revoca-

tion or reduction of pension benefits is excessive when the public employee/official fails to satisfy a basic condition precedent to the receipt of such funds. Finally, the Act applies to any public employee or official who committed a crime or crimes related to his or her public office. Although such crimes usually, if not invariably, involve some "finding of scienter," this one factor does not constitute the clearest proof of the statute's criminal purpose and effect because it does not, on balance, override the other factors confirming the Act's presumptive civil nature. Consequently, because PEPRRA does not exact a criminal punishment, revocation or reduction of defendant' s pension does not violate the prohibition against double jeopardy.

B. Cruel and Unusual Punishment

Article 1, section 8, of the Rhode Island Constitution prohibits any court from exacting penalties disproportionate to the offense charged. **See State v. Ouimette**, 479 A.2d 702, 706 (R.I. 1984). Likewise, as a matter of federal constitutional law, a court at a minimum may not impose a sanction that is grossly disproportionate to the offense charged. **Compare Harmelin v. Michigan**, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (affirming the imposition of a mandatory lifetime sentence for the defendant's conviction for possession of over 670 grams of cocaine), **with Solem v. Helm**, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983) (overturning a sentence of life imprisonment without parole because the sentence's disproportionality in relation to the charged crimes violated the Eighth Amendment). To determine whether a punishment is either disproportionate (in

violation of our state constitution) or grossly disproportionate to the offense charged (in violation of the Eighth Amendment to the federal Constitution), a court should analyze: (1) the gravity of the offense along with the harshness of the penalty, and if applicable, (2) the sentences imposed upon similarly situated offenders in this and/or other jurisdictions. **See Ouimette**, 479 A.2d at 706; 463 U.S. at 290-92, 103 S. Ct. at 3010-11, 77 L. Ed. 2d at 649-50. For the reasons discussed herein, we hold that the penalty imposed on defendant is not disproportionate to the magnitude of his crime.

Almeida analyzed the harshness of the pension revocation in that case in light of that defendant's dishonorable service as a Superior Court justice. In **Almeida**, we stated that:

> "termination of petitioner's pension is not disproportionate in comparison to the offenses he admittedly committed. By his judicial misconduct, [he] has breached the public trust by committing acts violative of his honored position as a respected jurist. His actions motivated by the desire for personal gain have operated to harm the public trust and confidence in the Judiciary as a whole and to affect adversely the honor and integrity of the very position he held and the capacity in which he served." **Almeida**, 611 A.2d at 1388.

Although **Almeida** involved the conduct of a state judge, the Court in no way limited the applicability of its reasoning to

the reduction or revocation of judicial pensions. On the contrary, **Almeida**'s rationale is equally applicable to a pension revocation or reduction for other public employees and officials who are convicted of crimes relating to their public office or employment. Moreover, although we based some of our reasoning in **Almeida** on that public official's former position as a Superior Court justice and the consequent damage he caused to the public trust reposed in the entire Judiciary, the fact that defendant in the case at bar was not a judge does not mean that his office did not also involve a substantial measure of public trust. As the city's Director of Public Works, defendant was in a position where he could allow the city and its taxpayers to be overcharged by $435,000 while he personally profited at the taxpayers' expense. Indeed, given the magnitude and duration of Azar's wrongdoing, even if the trial justice here had ordered a complete revocation of defendant's pension, his decision would not have constituted cruel and unusual punishment.

Nevertheless, the trial justice, though endowed with the discretionary, power to order a complete pension revocation, chose not to do so. Instead, to enable the defendant to make restitution for his own wrongdoing, the court ordered payment of his pension benefits to the defendant's dependent brother, to his related creditors, and to the city, and even allowed the defendant to keep future pension payments for himself. Although we reverse those portions of the judgment ordering the eventual reinstatement of the defendant's pension benefits and requiring payments of benefits to those relatives who lent him money, the defendant still will have had the benefit of hundreds of thousands of dollars worth of pension payments that have been or will be paid to himself

and to the city, despite his dishonorable service and criminal misconduct. Thus, neither the original nor the amended judgment in this case has punished the defendant so cruelly and unusually that it would violate the Rhode Island and federal constitutional bars against such punishments.

Conclusion

Although PEPRRA did not require him to revoke the defendant's public pension in its entirety, the trial justice in this instance abused his discretion in ordering certain portions of the defendant's pension benefits to be paid to the defendant himself and to the defendant's relatives. Therefore, we vacate those portions of the Superior Court judgment without disturbing those unchallenged portions that provide for the payments of pension monies to Dennis Azar and to the City of Cranston. Finally, we reject the defendant's claims that his constitutional rights to be protected against double jeopardy and cruel and unusual punishment have been violated in this case. Therefore, we reverse in part and affirm in part, and remand the papers in this case to the Superior Court for the entry of an amended judgment consistent with this opinion.

APPENDIX B.

Supreme Court
No. 97-351-A

The Retirement Board of the Retirement System of the State of Rhode Island :

v. :

Raymond J. Azar :

ORDER

The petition for reargument is denied.

Entered as an Order of this Court this *7th* day of ***January 1999.***

By Order,

/s/
Brian B. Bums
Clerk Pro Tempore

APPENDIX C.

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC.

THE RETIREMENT BOARD OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND	:	
VS.	:	C.A. NO. 93-4204
RAYMOND J. AZAR	:	

STIPULATION

Raymond J. Azar and the City of Cranston, for purposes of the above-captioned litigation and limited only to this litigation, stipulate as follows:

1. Raymond J. Azar owes the City of Cranston the sum of $210,000.00 for damages, interest and cost incurred by the City of Cranston as a result of the activities of Raymond J. Azar listed in Count I of State of Rhode Island v. Raymond J. Azar, PI/92-3221A ("the indictment").

2. The activities listed in Count I of the indictment occurred between January 1, 1987 and April 22, 1992 at a time when Raymond

J. Azar was the Director of Public Works for the City of Cranston.

3. There is no evidence nor does the City of Cranston have-any reason to believe that Raymond J. Azar did not render honorable service to the City of Cranston prior to January 1, 1987.

4. There is no evidence nor does the City of Cranston have reason to believe that Raymond J. Azar was involved in any dishonorable service during the time that he served as Chief Engineer for the City of Cranston from 1969 to September 16, 1985.

5. If the pension of Raymond J. Azar is neither revoked nor reduced, Raymond J. Azar will pay the sum of $210,000.00 to the City of Cranston over approximately a ten year period from the proceeds of his pension benefits, in consideration for this promise, the City of Cranston will dismiss its complaint against Mr. Azar in the matter of City of Cranston v.

Raymond J. Azar, et al, C.A. No. 94-0660B (U.S.D.C. D. of R.I.).

FOR THE CITY OF CRANSTON,

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APPENDIX D.

1992 R.I. Pub. Laws ch. 306, art. 1, §8

1218 JANUARY SESSION, 1992

TITLE 36 OF THE GENERAL LAWS ENTITLED "PUBLIC OFFICERS AND EMPLOYEES" IS HEREBY AMENDED BY ADDING THERETO THE FOLLOWING CHAPTER:

CHAPTER 10.1
RHODE ISLAND PUBLIC EMPLOYEE PENSION REVOCATION AND REDUCTION ACT

36-10.1-1. Short title. --
This chapter shall be known and may be cited as the "Public Employee Pension Revocation and Reduction Act."

36-10.1-2. Definitions. --
(a) "Crime related to public office or public employment" shall mean any of the following criminal offenses:

(1) The committing, aiding, or abetting of an embezzlement of public funds;

(2) The committing, aiding, or abetting of any felonious theft by a public officer or employee from his or her employer;

(3) Bribery in connection with the employment of a public officer or employee; and

(4) The committing of any felony by a public officer or employee who, wilfully and with the intent to defraud, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

(b) "Public official" or "public employee" shall mean any current or former state or municipal elected official as defined in section 36-14-2(l), state or municipal appointed official as defined in section 36-14-2(2) of the general laws, and employee of state or local government, of boards, commissions or agencies as defined in section 36-14-2(3) of the general laws, who is otherwise entitled to receive or who is receiving retirement benefits under this title, under title 16, under title 45, under title 8, under chapter 28-30, under chapter 31-43, or under chapter 42-28 of the general laws, whether that person is acting on a permanent or temporary basis and whether or not compensated on a full- or part-time basis. For the purposes of this chapter all such persons are deemed to be engaged in public employment.

(c) As used in this chapter, the phrase "pleads guilty or nolo contendere" shall not include any plea of nolo contenders which does not constitute a conviction by virtue of section 12-10-12 or section 12-18-3 of the general laws.

36-10.1-3. Revocation and reduction of benefits. --
(a) Notwithstanding any other provision of law, any retirement or other benefit or payment of any kind to which a

public official or public employee is otherwise entitled under this title, under title 16, under title 45, under title 8, under chapter 28-30, under chapter 31-43, or under chapter 42-48 of the general laws shall be revoked or reduced, in accordance with the provisions of this chapter, if, after the effective date of this act, such public official or public employee is convicted of or pleads guilty or nolo contenders to any crime related to his or her public office or public employment. Any such conviction or plea shall be deemed to be a breach of the public officer's or public employee's contract with his employer.

(b) Whenever any public official or public employee is convicted of or pleads guilty or nolo contenders to any crime related to his or her public office or public employment, the retirement board shall initiate a civil action in the superior court for the revocation or reduction of any retirement or other benefit or payment to which the public official or public employee is otherwise entitled under this title, under title 16, under title 45, under title 8, under chapter 28-30, under chapter 31-43, or under chapter 42-28 of the general laws. Legal standing is hereby conferred upon the retirement board to initiate and maintain such a civil action, and jurisdiction over such a civil action is hereby conferred upon the superior court.

(c) In any civil action under this chapter for the revocation or reduction of retirement or other benefits or payments, the superior court shall determine (i) whether the public employee has been convicted of or pleaded guilty or nolo contenders to any crime related to his or her public of-

fice or public employment and, if so, (ii) whether the retirement or other benefits or payments to which the public official or public employee is otherwise entitled should be revoked or diminished and, if so, (iii) in what amount or by what proportion such revocation or reduction should be ordered. In rendering its decision hereunder, the superior court shall consider and address each of the following factors:

(A) The fact that the allowance of retirement or other benefits or payments for service under this title, under title 16, under title 45, under title 8, under chapter 28-30, under chapter 31-43 and under chapter 42-28 of the general laws presumes and requires that such service shall have been honorably rendered;

(B) The severity of the crime related to public office or public employment of which the public official or public employee has been convicted or to which the public official or public employee has pleaded guilty or nolo contenders;

(C) The amount of monetary loss suffered by the public official's or public employee's employer or by any other person as a result of the subject crime related to public office or public employment;

(D) The degree of public trust reposed in the subject public official or public employee by virtue of his or her public office or public employment, and

(E) Any such other factors as, in the judgment of the superior court, justice may require.

(d) If the superior court determines that the retirement or other benefits or payments of a public official or public employee should be revoked or reduced under this chapter, it may, in its discretion and after taking into consideration the financial needs and resources of any innocent spouse, dependents and/or designated beneficiaries of the public official or public employee, order that some or all of the revoked or reduced benefits or payments be paid to any such innocent spouse, dependent or beneficiary as justice may require.

36-10.1-4. Return of contribution.--

(a) Any public official or public employee whose retirement or other benefits or payments are revoked pursuant to this chapter shall be entitled to a return of his or her contribution paid into the relevant pension fund(s), without interest.

(b) Any public official or employee whose retirement or other benefits or payments are reduced pursuant to this chapter shall be entitled to a pro rata return of a portion of his or her contribution paid into the relevant pension fund(s), in an amount proportionate to the amount of any such reduction, without interest.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section no payments in return of contributions shall be made or ordered unless and until the superior court determines that the public, official or public employee whose retirement or other benefits or payments have been revoked or reduced under this chapter has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses incurred by any

person as: a result of the subject crime related to public office or public employment. If the superior court determines that the public official or employee whose retirement or other benefits or payments have been revoked or reduced under this chapter has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction, it may order that any funds otherwise due to the said public official or public employee as a return of contribution, or any portion thereof, be paid in satisfaction of such judgment or order.

SECTION 9. Severability. --
If any provision of this article or the application thereof shall for any reason be judged invalid such a judgment shall not affect, impair or invalidate the remainder of the law, but shall be confined in its effect to the provisions or application directly involved in the controversy giving rise to the judgment.

SECTION 10. This article shall take effect on January 1, 1993.

APPENDIX E.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

THE RETIREMENT BOARD OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND	:	
V.	:	C.A. No. 93-4204
RAYMOND J. AZAR	:	
V.	:	
CITY OF CRANSTON	:	

DECISION

WILLIAMS, J. This is an action brought by the Department of Attorney General on behalf of the Retirement Board of the State of Rhode Island to terminate and revoke the pension of Raymond J. Azar ("Azar") who pled guilty to acts in breach of the public's trust while he served as Director of Public Works for the City of Cranston.

The Department of Attorney General asked this Court to invoke the sanctions of Section 36-10.1-1 et seq. of the Rhode Island General Laws (as amended) "Pension Revoca-

tion and Reduction Act" and seeks a total revocation of Azar's pension, with no payments to the City of Cranston, who is an intervenor and seeks a portion of said pension for payment of costs incurred as a result of the actions of Azar. The State also objects to any amounts of said pension to be paid for the benefit of the moderately retarded brother of defendant Azar, Dennis Azar ("Dennis").

Mr. Azar had thirty-one years in the State Retirement System in May 1992. On July 26, 1993, Azar pleaded guilty to one count of violating Section 17-15-1 et seq. for illegal activities occurring between January 1, 1987, and April 22, 1992, while serving as Director of Public Works for the city of Cranston.

He was sentenced to a term of ten years with five years to serve and five years suspended. After serving time at the Adult Correctional Institutions, Azar was placed in home confinement and work release. He is presently on parole and employed as a stock clerk earning a gross of approximately $250 a week. At his sentencing Azar was ordered to make restitution to the City of Cranston in the sum of $225,000, which sum was paid in full by October 14, 1993. This sum was raised by the sale of some of Azar's assets and by borrowing $80,500 from his brothers and sisters.

Mr. James M. Reilly, Deputy Director of the State Retirement System, testified that Azar has been receiving a pension under the provisions of section 36-10.1-2 et seq. of the Rhode Island General Laws (as amended) since May 5, 1992. The present amount of said pension is $51,341 or $4,378 per month. There will be a reduction of said pension when Mr. Azar reaches sixty-two because he has opted for a single-life annuity with Social Security supplements. Until

Azar reaches sixty-two years of age, there is a 3 percent anticipated increase to his pension effective each January. Mr. Azar's pension also has a death benefit of $4,000, the beneficiary of which is his sister, Rose Marie Canavan.

At the time his pension benefits began, Azar was fifty-three years and eight months old. With over thirty years' service he could commence receiving his pension, under the statute, at that time.

Mr. Azar, as an employee, contributed $55,135.61 to his pension; the City of Cranston's contributions were about $82,000.

Mr. Reilly described that the Social Security Supplemental Option permitted a retired employee to receive a portion of his Social Security as if he had worked to age sixty-two. So, the retired employee would, before the age of sixty-two, receive a percentage of the amount that he would at age sixty-two. In this case, Azar received 54 percent, since May 5, 1992, of what he would have received in the way of Social Security benefits if he were sixty-two years old. Then, at age sixty-two, his pension would be reduced by the sum of $11,700 because of this early payout.

The City of Cranston makes a gross contribution each year for all of its employees - active and retired - based on a recommended actuarial figure - now 7 percent of its employees' total payroll. If Azar's pension was revoked, the City would not have to pay the 7 percent attributable to him. Nor would it have to contribute 3 percent toward the cost-of-living increase. But it also would not receive any of the monies it now claims are due the City to satisfy <u>all</u> of its costs attributable to Azar's actions.

While the State Retirement Board, through the Department of Attorney General, wants the pension of Raymond Azar revoked in its entirety, the City of Cranston seeks the sum of $210,000 from said pension to fully restore the City to its place financially prior to the illegal conduct of Raymond Azar. The testimony of Attorney Karen Finley, an attorney for the City, breaks this requested sum out as follows: (a) the amounts alleged in the indictment total $350,522 less $225,000 paid; (b) total remaining $125,522 plus attorneys' fees - $31,278; (c) total now is $156,800; (e) total amount lost by the City of Cranston is $659,500, when divided by the $350,522 attributed to Mr. Azar, the percentage is .53; (f) audit costs for the City of Cranston were approximately $100,000 - multiplied by .53 equals Azar's share of $53,000, which, when added to $156,800, equals $209,800 or $210,000 (rounded). The City has commenced a separate civil action in the United States District Court for the District of Rhode Island to recover this sum.

Dennis Azar

It is uncontradicted that Azar lives in the family home, formerly occupied by his late mother and father, and cares for his brother, Dennis, who is moderately retarded. Raymond Azar has been caring for his brother for many years.

It is uncontradicted and corroborated by Mr. Raymond Azar's sister, Rose Marie Canavan, as well as the Guardian ad Litem for Dennis, Attorney John Baglini, that Dennis is totally dependent on Raymond Azar. Mr. Baglini

testified that the answers to interrogatories indicating Dennis's expenses were "reliable estimates."

In addition to the sum of $399, which Dennis receives from Social Security, Mr. Baglini testified that Mr. Dennis Azar should receive, from Mr. Raymond Azar's pension, the sum of $1500 per month to satisfy the expenses of Dennis.

Raymond Azar

Defendant Raymond Azar's position is that he is willing to pay from his pension the sum of $210,000 to the City of Cranston, at which time the separate action in the United States District Court of the District of Rhode Island would be dismissed, and that said sum be paid monthly after taxes, if any, and after the sum of $1500 is placed in a "trust" for the use and support of his brother Dennis. Mr. Raymond Azar, at some point in the future, would seek, after the City has been reimbursed the sum of $210,000, what pension benefits are remaining less the $1500 stipend for the benefit of his brother Dennis.

Mr. Raymond Azar testified that he did commit the illegal acts as set forth in the indictment,, that he did plead guilty to these charges, that he agreed to pay restitution to the City of Cranston in the sum of $225,000, and that he did in fact pay said sum in two payments by selling his house in New Hampshire, liquidating assets, and borrowing $80,500 from his brothers and sisters. In addition, Azar testified that he served two years, was denied parole upon his first application, and was placed on parole when he again applied - his present status.

Mr. Raymond Azar expressed remorse at his illegal activities and was candid in his admission and the humiliation he sustained as a result of his illegal conduct. Mr. Raymond Azar, who is a professional engineer, had his license suspended by the Board of Professional Engineers for ten years, making it impossible for him to reapply to practice his profession until the year 2003.

Mr. Azar's sister, Rose Marie, testified that on the occasion of Azar's arrest, Azar met with his family and candidly admitted to his illegal activities.

It appears uncontradicted that of thirty years of public service, said illegal activity occurred over a period of five years, i.e., from 1987 to 1992.

Decision

The operative statute in this case is the "Pension Revocation and Reduction Act" (Section 36-10.1-1 et seq. of the Rhode Island General Laws (as amended)).

Said statute requires that whenever a public official is convicted or pleads guilty to any crime related to his public office, the State Retirement Board must initiate a civil action for the revocation or reduction of his retirement or other benefit or payment to which the public official was otherwise entitled (Section 36-10.1-3(B)). The Superior Court is required under the provisions of Section 36-10.1-3(C) to: (1) determine whether the public employee has been convicted of or pleaded guilty to a crime relating to his public office; (2) whether the retirement or any other benefits to which the public official was otherwise entitled should be revoked or diminished; (3) and if so by what amount or what proportion

such revocation or reduction should be ordered. (Emphasis added.)

The Court, in rendering its decision, must consider these factors: (a) the fact that the retirement benefits of this public official were permitted under a provision of our Rhode Island General Laws and that such retirement or other benefits presume that such service shall have been honorably rendered; (b) the severity of the crime related to the respondent's public office; (c) the amount of loss sustained by the public employee's employer; (d) the degree of public trust in the respondent public official as a result of his public office; and (e) "any such other factors as, in the judgment of the Superior Court, justice may require." (Emphasis added.)

Paragraph (D) of section 36-10.1-3 permits the Superior Court "in its discretion" to order ". . . that some or all of the revoked or reduced benefits or payments be paid to any . . . dependent or beneficiary as justice may require."

Pursuant to paragraph (E) the Superior Court may determine that the retirement or other benefits of a public official shall not be revoked or reduced and, if so, the record shall indicate that the initiation of a civil action had not, in fact, occurred. (Emphasis added.)

Review of Factors

(a)

In Reviewing the first factor this Court finds that respondent Raymond Azar was entitled to a pension benefit pursuant to section 36-10.1-2 et seq. (as amended) and that the retirement benefit was premised upon honorable service

duly rendered as Director of the Department of Public Works for the City of Cranston.

(b)

This Court finds that respondent Azar has duly admitted to committing serious crimes related to his fiduciary duty as Director of the Department of Public Works for the City of Cranston by receiving bribes from contractors who were allowed to overbill the City of Cranston by Azar for work never performed for the benefit of the City or its citizens. The Court finds that the nature of his crimes were serious, but this finding is tempered by the fact that they appear to have occurred during the last five years of a thirty-year career in public service, and that respondent Azar has admitted the crimes, has been sentenced for the commission of said crimes, has served two years of a ten-year sentence, and is presently on parole.

(c)

The Court finds that the monetary loss sustained by the City of Cranston was initially $225,000, which sum has been repaid the City of Cranston by respondent Azar. Furthermore, the actual and final accounting of the loss to said City is an additional sum of $210,000, which respondent Azar acknowledges and is willing to pay the City from the proceeds of his pension.

(d)

There is no question in this Court's opinion that a high degree of public trust was placed with this public official in his capacity as Director of the Department of Public Works with broad powers to engage in contracts and other binding obligations on behalf of the City of Cranston.

(e)

The Court believes that the following facts must be taken into consideration in rendering a decision in this matter.

First, the Court considers the accepted plea of guilty of respondent Azar to the criminal charges in which he pled openly to criminal misconduct permitted by him during the last five years of his public employment and privately admitted to such crimes to his family. While not diminishing the nature and extent of Azar's crimes, this Court takes notice that such admission of guilt, both personally and publicly, avoided the expense and length of a public trial and the wrenching emotions following therefrom.

Second, and unlike many other cases, the monetary loss to the City of Cranston was quantifiable and despite an original dispute as to the amount of restitution, the Court ordered the sum of $225,000 as restitution, which sum was paid by respondent Azar. The City of Cranston now seeks an additional sum of $210,000, which respondent Azar is willing to pay from his retirement benefits. This Court believes that one of the reasons for the passage of the Pension Revocation and Reduction Act was to prevent a public official

who is guilty of a breach of trust and undertakes illegal acts from benefitting therefrom.

This Court is convinced that the payment of said $210,000 to the City of Cranston is appropriate and necessary to repay, in full, the loss sustained by the City of Cranston and its taxpayers. To do otherwise would be, in this Court's opinion, in contravention of the intent and spirit of Section 36-10.1-3 of the Rhode Island General Laws (as amended), particularly paragraph (C), subparagraph (c).

This Court also believes that it is necessary to invoke paragraph (D) of said section 36-10.1-3 as to respondent's brother Dennis. Despite the misconduct of respondent Raymond Azar, this Court is impressed with the loving care rendered Dennis Azar by Raymond Azar and the other members of the Azar family. Absent that, Dennis Azar would be, if not institutionalized, placed in a group home at significant cost to the State of Rhode Island. To deny a certain portion of the retirement proceeds for the health, welfare, and benefit of the said Dennis Azar would also be in contravention of the intent of paragraph (D). This Court acknowledges the diligence of the court appointed Guardian ad Litem in this matter and accepts said guardian's findings as its own. This Court believes that the sum of $1500 a month should be paid in trust for the benefit of Dennis Azar. This Court also believes and accepts the guardian's recommendation that the trustee for payment of said funds be respondent, Raymond Azar, there being no reason to deny this caring and loving brother the continued right, obligation, and burden to care for his moderately retarded sibling.

Order

Therefore, after considering all of the facts and circumstances in this case, including equitable considerations and the law, as well as balancing the public right, remedial action, and dependent need, this Court orders as follows:

I

That the pension retirement benefit due respondent Raymond Azar is hereby revoked and any sums that would have been due Raymond Azar thereunder are to be paid by the State Retirement Board as follows:

(a) The sum of $1500 per month shall be paid by the State Retirement System, in trust, to respondent Raymond Azar, who shall serve as trustee for his brother Dennis Azar, as long as said Dennis Azar is alive or said sum is available to be paid from said retirement benefit, or until the death of the said Raymond Azar, whichever event shall first occur. Raymond Azar shall provide this Court a yearly accounting of said funds.

(b) The balance of any monthly sum due in the way of retirement benefits to respondent Raymond Azar shall be paid by the State Retirement System to the Treasurer of the City of Cranston until the sum of $210,000 has been paid said City to reimburse it in full for the expenses and losses incurred by the City of Cranston as the result of the misconduct of Raymond Azar, and that said payment shall continue until said sum of $210,000 is paid or that said benefits cease as a result of the death of Raymond Azar.

(c) As a result of said payment, the complaint in the United States District Court for the District of Rhode Island brought by the City of Cranston against the said Raymond Azar shall be dismissed by the City with prejudice pursuant to the stipulation entered into between said Raymond Azar and said City of Cranston.

(d) Once the City of Cranston is paid the sum of $210,000, then the remaining portion of said monthly pension, after deducting the monthly sum of $1500 for the benefit of Dennis Azar in accordance with paragraph (a) above, shall be paid to the brothers and sisters of the respondent Raymond Azar, or their estates, until their loan to him in the amount of $80,500, or any balance due thereon, has been paid in full or until said pension shall cease upon the death of Raymond Azar, whichever event shall first occur.

(e) Once the obligations to the City of Cranston and to the brothers and sisters of the said Raymond Azar have been paid in full, then the said Raymond Azar may receive the balance of the monthly proceeds after the deduction of the sum of $1500 per month for the benefit of his brother Dennis in accord with paragraph (a) hereof and to the extent of said payments to Raymond Azar, his pension/retirement benefits are reinstated.

The attorneys for the State Retirement Board, Raymond Azar, and the City of Cranston shall collaborate and prepare a judgment consistent with this decision.